IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 552/2004

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 30, 2006

Heard Ms. Sahare, learned counsel for the appellants and Mr. Solav, learned counsel for the respondents.

By this appeal, the appellants take exception to the judgment and decree dated 2.8.2004 passed by 3rd Adhoc Additional District Judge, Bhandara in Regular Civil Appeal No.105/2001 dismissing the appeal filed by the defendants against judgment and decree dated 27.9.2001 passed by Civil Judge, Jr. Dn. Paoni in Regular Civil Suit No. 20/1999.

The respondents-plaintiffs filed the above referred suit against the appellants-defendants for partition and separate possession in respect of the suit property.

The suit was contested. The trial Court held that the suit property was ancestral property of defendant no.1 and that there was partition in which plaintiff no.1 was also a party. Consequently, the trial Court decreed the suit holding that plaintiff no.2 - the daughter of plaintiff no.1 and defendant no.1 had undivided half share in the suit property. In the appeal preferred by the defendants the lower appellate court after concurring with the findings given by the trial Court held that the suit property was ancestral property and, therefore, the lower appellate Court dismissed the appeal filed by the defendants.

Ms. Sahare, learned counsel for the appellants submitted that the finding given by the trial Court and confirmed by the lower appellate Court that the suit property was ancestral property is totally perverse and both the Courts below ought to have held that the suit property is self-acquired property of defendant no.1.

Per contra, Mr. Solav learned

counsel for the respondents submitted that the findings given by both the Courts below are borne out from the evidence on record. According to Mr. Solav, the finding given by the trial Court that the suit property is ancestral property is based upon proper appreciation of the evidence led by the parties and, therefore, cannot be said to be perverse. He therefore, urged that no interference is called for in the present appeal.

I have considered the submissions made by learned counsel for the parties. I have perused the impugned judgments passed by both the Courts below. Having perused the findings given by both the Courts below, I am satisfied that the finding given by the trial Court and confirmed by the lower appellate Court that the suit property was ancestral property cannot be said to be perverse warranting interference in second appeal. The said finding has been correctly arrived at after appreciating the evidence led by the parties. Therefore, there is no

perversity in the findings given by both the Courts below. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

C.A. No. 7659/2004

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.